

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**PHOEBE RENEE HALLIWELL,  
a/k/a Ronny Darnell,**

**Plaintiff,**

**v.**

**JOE ALLBAUGH, et al.,**

**Defendant(s).**

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**Case No. CIV-18-1152-D**

**ORDER**

On August 23, 2019, Plaintiff filed a Motion to Dismiss without Prejudice (ECF No. 61) in which Plaintiff requests that the Court dismiss the action without prejudice.

Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Under this Rule, "a plaintiff has an absolute right to dismiss without prejudice and no action is required on the part of the court." *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). Because no opposing party has served either an answer or a motion for summary judgment in this action, the Court construes Plaintiff's Motion as a notice of voluntary dismissal under Rule 41(a)(1)(A)(i). *See Deutsch v. Gallegos*, 98 F. App'x 723, 724-25 (10th Cir. 2004).

Thus, Plaintiff's case was dismissed without prejudice on August 23, 2019 when her Motion (ECF No. 61) was filed, and the Clerk of Court is directed to close the file effective that date.

**IT IS SO ORDERED** on August 30, 2019.



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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE